

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Squad #5	CCRB Case #: 202003492	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/22/2020 10:23 PM	Location of Incident: in front of 7 Revere Place	Precinct: 77	18 Mo. SOL 11/22/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sat, 05/23/2020 1:06 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 05/23/2020 1:06 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Forrest Hirsch	00000	941905	PBBN SU
2. POM Gregory Trimarchi	09057	957227	PBBN SU
3. POM Sean Walsh	07614	961437	PBBN SU
4. POM Michael Desposito	2001	954726	PBBN SU

Officer(s)	Allegation	Investigator Recommendation
A.LT Forrest Hirsch	Abuse: Lieutenant Forrest Hirsch stopped § 87(2)(b)	
B.LT Forrest Hirsch	Abuse: Lieutenant Forrest Hirsch frisked § 87(2)(b)	
C.POM Michael Desposito	Abuse: Police Officer Michael Desposito stopped an individual.	
D.POM Michael Desposito	Abuse: Police Officer Michael Desposito frisked an individual.	
E.POM Sean Walsh	Abuse: Police Officer Sean Walsh stopped § 87(2)(b)	
F.POM Sean Walsh	Abuse: Police Officer Sean Walsh frisked § 87(2)(b)	
G.POM Sean Walsh	Abuse: Police Officer Sean Walsh searched § 87(2)(b)	
H.LT Forrest Hirsch	Force: Lieutenant Forrest Hirsch used physical force against § 87(2)(b)	
I.LT Forrest Hirsch	Force: Lieutenant Forrest Hirsch used physical force against § 87(2)(b)	
J.LT Forrest Hirsch	Discourtesy: Lieutenant Forrest Hirsch spoke discourteously to individuals.	
K.LT Forrest Hirsch	Off. Language: Lieutenant Forrest Hirsch made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
L.LT Forrest Hirsch	Discourtesy: Lieutenant Forrest Hirsch spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
M.LT Forrest Hirsch	Force: Lieutenant Forrest Hirsch used physical force against § 87(2)(b)	
N.LT Forrest Hirsch	Force: Lieutenant Forrest Hirsch hit § 87(2)(b) against a vehicle.	
O.POM Michael Desposito	Force: Police Officer Michael Desposito used physical force against § 87(2)(b)	
P.POM Michael Desposito	Force: Police Officer Michael Desposito used physical force against § 87(2)(b)	
Q.POM Michael Desposito	Abuse: Police Officer Michael Desposito failed to provide an individual with a business card.	
R.POM Sean Walsh	Abuse: Police Officer Sean Walsh failed to provide § 87(2)(b) with a business card.	
S.LT Forrest Hirsch	Discourtesy: Lieutenant Forrest Hirsch spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

## Case Summary

On May 23, 2020, § 87(2)(b) filed this complaint on the CCRB website. On May 23, 2020, § 87(2)(b) filed a duplicate complaint with IAB, generating original log number 2020-13127, which was forwarded to the CCRB on May 29, 2020.

On May 22, 2020, at approximately 10:23 p.m., § 87(2)(b) and § 87(2)(b) were in front of 7 Revere Place in Brooklyn with § 87(2)(b) § 87(2)(b) and several unidentified individuals. Lieutenant Forrest Hirsch and Police Officers Michael Desposito, Gregory Trimarchi, and Sean Walsh, then assigned to Patrol Borough Brooklyn North Anti-Crime, arrived on the scene. Lt. Hirsch allegedly stopped and frisked § 87(2)(b) (**Allegations A-B: Abuse of Authority, § 87(2)(g)**). PO Desposito stopped and frisked an unidentified individual (**Allegations C-D: Abuse of Authority, § 87(2)(g)**). PO Walsh stopped and frisked § 87(2)(b) (**Allegations E-F: Abuse of Authority, § 87(2)(g)**). PO Walsh searched § 87(2)(b)'s fanny pack (**Allegation G: Abuse of Authority, § 87(2)(g)**). Lt. Hirsch allegedly shoved § 87(2)(b) and § 87(2)(b) to the ground (**Allegations H-I: Force, § 87(2)(g)**). Lt. Hirsch allegedly said, "Shut the fuck up," to civilians on scene (**Allegation J: Discourtesy, § 87(2)(g)**). Lt. Hirsch allegedly called § 87(2)(b) a "bitch" (**Allegation K: Offensive Language, § 87(2)(g)**; **Allegation L: Discourtesy, § 87(2)(g)**).

Lt. Hirsch arrested § 87(2)(b). While handcuffing § 87(2)(b) and placing her in a police vehicle, Lt. Hirsch allegedly struck § 87(2)(b) with his elbow (**Allegation M: Force, § 87(2)(g)**) and allegedly struck her against the side of the vehicle (**Allegation N: Force, § 87(2)(g)**). The officers and § 87(2)(b) entered the police vehicle to drive away from the scene. § 87(2)(b) approached the police vehicle, and PO Desposito shoved § 87(2)(b) back twice (**Allegation O: Force, § 87(2)(g)**; **Allegation P: Force, § 87(2)(g)**). PO Desposito failed to offer a business card to the individual he stopped and frisked, and PO Walsh failed to offer a business card to § 87(2)(b) (**Allegations Q-R: Abuse of § 87(2)(g)**). Inside the vehicle, Lt. Hirsch said to § 87(2)(b) "I don't give a fuck where you work" (**Allegation S: Discourtesy, § 87(2)(g)**).

§ 87(2)(g), § 87(4-b)

§ 87(2)(b) was issued a summons for disorderly conduct and released.

The investigation was hampered by a lack of cooperation from the civilians involved. § 87(2)(b) provided a brief telephone statement (**Board Review 01**) but was uncooperative in providing full testimony. § 87(2)(b) provided a brief telephone statement (**Board Review 02**) but was audibly being coached by § 87(2)(b) while on the phone, and he was subsequently uncooperative in providing fuller, independent testimony. § 87(2)(b) refused to provide any statement. § 87(2)(b) provided a brief telephone statement (**Board Review 03**) and a lengthier telephone interview (**Board Review 04**) about the incident. § 87(2)(b)'s testimony was internally inconsistent, her behavior on the phone was highly erratic, and she failed to answer most questions intended to clarify her account. None of the other civilians on scene could be identified. Due to pandemic-related delays, the subject officers were not interviewed until 12-15 months after the incident, and they did not have clear recollections.

The investigation obtained partial BWC footage (**Board Review 05-09**). It does not begin immediately upon the officers' arrival on scene, and absent clear testimony about the timeline of events, the investigation could not determine when in the incident the officers activated their

cameras. Additionally, Lt. Hirsch and PO Trimarchi's cameras fell off and stopped recording for portions of the incident, PO Desposito briefly deactivated his camera during the incident, and PO Walsh did not activate his camera until the officers were leaving the scene. All references to video evidence below refer to the time stamp in the video player, not to any on-screen clock embedded in the footage itself.

PO Trimarchi has since been reassigned to the 100<sup>th</sup> Precinct Detective Squad. PO Desposito has been reassigned to the 75<sup>th</sup> Precinct. PO Walsh has been reassigned to the 75<sup>th</sup> Precinct Detective Squad.

### **Findings and Recommendations**

**Allegation (A) Abuse of Authority: Lieutenant Forrest Hirsch stopped** § 87(2)(b)

**Allegation (B) Abuse of Authority: Lieutenant Forrest Hirsch frisked** § 87(2)(b)

**Allegation (C) Abuse of Authority: Police Officer Michael Desposito stopped** § 87(2)(b)

**Allegation (D) Abuse of Authority: Police Officer Michael Desposito frisked** § 87(2)(b)

PO Desposito's BWC footage (**Board Review 05**, from 00:00-00:20) shows that he approached a man wearing a gray sweatsuit, apparently frisked the front of his sweatshirt, and then frisked his legs. PO Desposito then walked away and joined the other officers interacting with other civilians. PO Desposito's footage begins 43 seconds before the BWC footage of any other officer, and his interaction with the man in the gray sweatsuit is not captured in any other footage.

§ 87(2)(b) reported in his telephone statement (**Board Review 01**) that officers frisked § 87(2)(b) and other unidentified individuals on scene, but he did not identify the subject officers or provide any more information about this portion of the incident. § 87(2)(b) acknowledged that individuals on scene were drinking liquor out of plastic cups, but he denied that a liquor bottle was visible.

§ 87(2)(b) reported in her telephone statement (**Board Review 03**) that an officer—whom she could not clearly describe, but who she stated was not Lt. Hirsch—frisked the pockets of § 87(2)(b) who she knew by the street name "§ 87(2)(b)". In her subsequent telephone interview (**Board Review 04**), § 87(2)(b) reported that Lt. Hirsch frisked § 87(2)(b) front pants pockets, and described § 87(2)(b) as wearing a white t-shirt and jeans. § 87(2)(b) denied that any individuals on scene were drinking or smoking.

In his telephone statement (**Board Review 02**), § 87(2)(b) denied that officers frisked and searched anyone on scene other than § 87(2)(b). § 87(2)(b) acknowledged that individuals on scene were drinking Hennessy out of plastic cups, but he denied that the liquor bottle was visible.

PO Desposito testified (**Board Review 10**) that he observed individuals on Revere Place drinking alcohol, although he could no longer recall what he specifically observed of the alcohol. He also smelled the odor of marijuana. These observations prompted PO Desposito to exit his vehicle and approach the group. As he was approaching, PO Desposito observed a man wearing a gray sweatsuit walk away from the group and move behind a parked car, where he put down an object, which PO Desposito subsequently located on the ground and determined to be a marijuana cigarette. PO Desposito further observed that the man had an L-shaped bulge in the front pocket of his sweatshirt which was heavy and weighing down the garment. PO Desposito did not recall any other bulges on the man's person. PO Desposito approached the man and frisked the bulge, which he determined by feel to be a cellphone and a roll of papers. PO Desposito did not initially testify that he also frisked the man's legs, but he acknowledged that he did so after reviewing BWC

footage. He testified that he frisked the man's legs to ensure that he had not concealed anything there. PO Desposito did not see any specific indication that the man had concealed anything on his legs. PO Desposito did not know anyone else on scene to have been frisked, and he denied seeing Lt. Hirsch frisk anyone.

Lt. Hirsch testified (**Board Review 11**) that he observed individuals on Revere Place drinking Hennessey, which he identified by the visible bottles on the street, and smoking marijuana, which he identified by the odor. Lt. Hirsch recalled the officers' subsequent interaction with § 87(2)(b) (discussed in Allegations E-G below), but he testified that he did not believe that anyone else on scene was frisked, and he did not believe that he frisked anyone on scene.

PO Walsh testified (**Board Review 12**) that he observed individuals on Revere Place drinking alcohol, which he identified by the open containers in their hands, and smoking marijuana, which he identified by a cloud of smoke and the odor of marijuana. PO Walsh immediately focused on § 87(2)(b) (discussed under Allegations E-G below) and did not pay attention to what his fellow officers did when they approached the group. PO Walsh did not know whether PO Desposito or Lt. Hirsch stopped and frisked anyone on scene.

The officers did not prepare any Stop Reports regarding this incident. PO Desposito's memo book entry (**Board Review 13**) was consistent with his testimony. Lt. Hirsch's memo book entry (**Board Review 14**) also was consistent with his testimony, and it does not indicate that he stopped or frisked anyone on scene.

Without complete or reliable testimony from any civilian on scene, or confirmation that the officers' BWC footage captured the entirety of the incident, the investigation was not able to establish many key facts about this portion of the incident. It is unclear whether any civilians on scene were smoking marijuana or drinking beverages that were recognizable as alcohol when the officers approached. It is also unclear whether the man in the gray sweatsuit visible in the footage is § 87(2)(b) whom § 87(2)(b) alternately alleged was frisked by an unidentified officer or Lt. Hirsch, or whether he is another unidentified member of the group. Finally, it is unclear whether the man in the gray sweatsuit was the only individual in the group who was initially frisked, or whether there were additional frisks that were not captured on video. In addition, there is no testimony or other evidence that either corroborates or refutes PO Desposito's assertion that the man wearing the gray sweatsuit had an L-shaped bulge on his person or that he moved behind a vehicle and deposited an object.

§ 87(2)(g)

§ 87(2)(g)

**Allegation (E) Abuse of Authority: Police Officer Sean Walsh stopped § 87(2)(b)**

**Allegation (F) Abuse of Authority: Police Officer Sean Walsh frisked § 87(2)(b)**

**Allegation (G) Abuse of Authority: Police Officer Sean Walsh searched § 87(2)(b)**

PO Desposito's BWC footage (**Board Review 05**, 00:20-01:19) shows that PO Walsh was the first

officer to approach § 87(2)(b) § 87(2)(b) intervened to prevent PO Walsh from reaching § 87(2)(b) and PO Desposito approached and grasped § 87(2)(b) to keep him stationary as PO Walsh approached him. Lt. Hirsch's BWC footage (**Board Review 07**, 00:03-00:15) shows that PO Walsh frisked and/or searched § 87(2)(b)'s stomach area. Neither of these clips captures PO Walsh's hands, so it is unclear what precisely PO Walsh did. PO Trimarchi's BWC footage does not capture this interaction clearly due to the camera angle. PO Walsh had not yet activated his BWC at this portion of the incident.

§ 87(2)(b) reported (**Board Review 01**) that he was carrying a fanny pack across his chest which contained numerous items including two phones and a wallet. He denied that the items created a bulge in the pack. PO Walsh approached § 87(2)(b) and grasped the fanny pack, prompting § 87(2)(b) to pull the fanny pack away. PO Walsh felt the outside of the fanny pack, and then unzipped it and looked inside.

§ 87(2)(b) reported in her telephone statement (**Board Review 03**) that officers approached § 87(2)(b) but she did not report that they frisked or searched him. In her subsequent telephone interview (**Board Review 04**), § 87(2)(b) reported that officers approached § 87(2)(b) and § 87(2)(b) opened his fanny pack to show the officers its contents. She did not recount that officers frisked and searched § 87(2)(b).

In his telephone statement (**Board Review 02**), § 87(2)(b) reported that Lt. Hirsch and one or two other officers, whom he could not describe, approached § 87(2)(b) patted § 87(2)(b)'s waistband, and reached into § 87(2)(b)'s pockets. An officer also attempted to search § 87(2)(b)'s fanny pack, but § 87(2)(b) pulled the fanny pack away.

PO Desposito testified (**Board Review 10**) that he observed PO Walsh approaching § 87(2)(b) and § 87(2)(b) moving away from PO Walsh and moving his fanny pack away from his front towards his side and back. PO Desposito approached and grasped hold of § 87(2)(b) because he assessed that PO Walsh was having difficulty stopping him. PO Desposito did not see whether the fanny pack had any bulges, and he did not pay attention to what PO Walsh was doing while he was holding § 87(2)(b). PO Desposito did not know whether PO Walsh frisked or searched § 87(2)(b).

Lt. Hirsch testified (**Board Review 11**) that he subsequently learned that an officer had observed a bulge on § 87(2)(b)'s fanny pack, although he did not observe this bulge himself. Lt. Hirsch did not closely watch the officers' interaction with § 87(2)(b) as he was focused on his own interaction with § 87(2)(b). Lt. Hirsch observed that an officer frisked § 87(2)(b)'s fanny pack, but he did not see any officer search the fanny pack.

PO Walsh testified (**Board Review 12**) that, as he approached the group, he observed an L-shaped bulge inside § 87(2)(b)'s fanny pack, which he suspected to be a gun. As he approached, PO Walsh observed that § 87(2)(b) backed up an unknown distance, which indicated to PO Walsh that he wished to avoid the officers. PO Walsh did not recall § 87(2)(b) drinking or smoking. PO Walsh approached § 87(2)(b) and frisked the bulge on the fanny pack. From the frisk, PO Walsh determined that the bulge was hard, but he did not know what it was and thought it might have been either a gun or a knife. PO Walsh opened the fanny pack and reached inside, allowing him to determine that the bulge was neither a gun nor a knife but a cell phone and a quantity of papers.

Based on the relatively consistent accounts of § 87(2)(b) and PO Walsh, the investigation established that PO Walsh frisked and searched § 87(2)(b)'s fanny pack. Absent any

additional testimony or other evidence about the appearance of the fanny pack, the investigation could not establish whether the fanny pack had no bulges, as § 87(2)(b) asserted, or contained an L-shaped bulge, as PO Walsh testified.

Patrol Guide Procedure 212-11 (Board Review 15) states that, if a police officer develops a reasonable suspicion that a person is armed and dangerous, the officer may frisk the person for a deadly weapon or any instrument, article, or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons. Reasonable suspicion that a person is armed and dangerous may arise from the officer's observations or the facts and circumstances of the encounter including observation of something on the person that the officer reasonably suspects is a weapon. An officer may not frisk a person's bag or other item of personal property unless the officer has reasonable suspicion to believe that the person is armed and dangerous and that the bag or item of personal property could contain a weapon and is within the person's reach. If the bag is soft, the officer should run his hands down the outside of the bag and open it only if he feels the contours of what he believes is a weapon.

In instances where a visual observation reveals a bulge, that bulge must look or feel like a weapon before an officer is entitled to subject a detainee to a further and more intrusive search. It is unreasonable for police officers, experienced in handling guns and other weapons, to mistake a bulge for a gun during a frisk, as the feel of a gun is unmistakable. *People v. Robinson*, 125 A.D.2d 259 (1st Dept., 1986) (**Board Review 16**). Feeling a hard object absent any information linking an individual to possession of a weapon does not provide particular facts to which an inference could be drawn that a defendant is armed. *People v. Sanchez*, 38 N.Y.2d 72 (1975) (**Board Review 17**).

§ 87(2)(g)

PO Walsh testified that, upon frisking the bulge, he determined that it could either be a gun or a knife. § 87(2)(g)

**Allegation (H) Force: Lieutenant Forrest Hirsch used physical force against § 87(2)(b)**

**§ 87(2)(b):**

**Allegation (I) Force: Lieutenant Forrest Hirsch used physical force against § 87(2)(b)**

**Allegation (J) Discourtesy: Lieutenant Forrest Hirsch spoke discourteously to individuals.**

**Allegation (K) Offensive Language: Lieutenant Forrest Hirsch made remarks to § 87(2)(b)**

**§ 87(2)(b) based upon the gender of § 87(2)(b)**

**Allegation (L) Discourtesy: Lieutenant Forrest Hirsch spoke discourteously to § 87(2)(b)**

**Allegation (M) Force: Lieutenant Forrest Hirsch used physical force against § 87(2)(b)**

**Allegation (N) Force: Lieutenant Forrest Hirsch hit § 87(2)(b) against a vehicle.**

PO Trimarchi's BWC footage (**Board Review 06**, 00:20-02:00) captures this portion of the incident most clearly. The footage shows that § 87(2)(b) was extremely agitated and approached PO Desposito and PO Walsh as they were interacting with § 87(2)(b). Lt. Hirsch and PO Trimarchi pulled § 87(2)(b) away, prompting § 87(2)(b) to shove Lt. Hirsch. Fifty seconds later, after PO Walsh and PO Desposito had released § 87(2)(b), § 87(2)(b) again

approached Lt. Hirsch and yelled at him. Lt. Hirsch grabbed § 87(2)(b) and told her that she was under arrest. There is no audio in this portion of the footage. § 87(2)(b) grabbed § 87(2)(b) and attempted to pull her away from Lt. Hirsch. Lt. Hirsch pulled § 87(2)(b) away from § 87(2)(b) and in the direction of a parked vehicle, but he did not strike her against the vehicle. Lt. Hirsch ordered § 87(2)(b) to turn and put her hands behind her back, and she complied. PO Trimarchi and Lt. Hirsch handcuffed § 87(2)(b). Lt. Hirsch's BWC footage (**Board Review 07**, 00:45-02:00) also captures Lt. Hirsch's second interaction with § 87(2)(b) including Lt. Hirsch escorting § 87(2)(b) to the police vehicle. Lt. Hirsch ordered § 87(2)(b) to sit in the vehicle and she complied. At no point during the footage did Lt. Hirsch strike § 87(2)(b) against a vehicle or strike her with his elbow. At no point during the footage did Lt. Hirsch use the words "fuck" or "bitch." He did twice tell § 87(2)(b) and other individuals on scene to "shut up," as she and the other civilians were screaming at him throughout the encounter.

§ 87(2)(b) reported (**Board Review 01**) that, while PO Walsh and PO Desposito were interacting with him, § 87(2)(b) approached and yelled at the officers. Officers handcuffed § 87(2)(b). § 87(2)(b) did not report officers using any physical force or profanity through this portion of the incident. § 87(2)(b) did not allege that Lt. Hirsch shoved him to the ground.

§ 87(2)(b) reported in her telephone statement (**Board Review 03**) that she approached and spoke to the officers while they were interacting with § 87(2)(b) prompting Lt. Hirsch to say, "Shut the fuck up," to her and to grab her arm. § 87(2)(b) pulled her arm away, knocking off Lt. Hirsch's BWC. Lt. Hirsch grabbed § 87(2)(b) a second time and handcuffed her. Lt. Hirsch called § 87(2)(b) a "bitch" while handcuffing her. Lt. Hirsch struck § 87(2)(b) with his elbow while placing her in the vehicle. § 87(2)(b) did not initially allege that Lt. Hirsch used any other force against her.

In her subsequent telephone interview (**Board Review 04**), § 87(2)(b) significantly altered her account of her interaction with Lt. Hirsch. § 87(2)(b) stated that, when she approached the officers interacting with § 87(2)(b) Lt. Hirsch called her a "bitch," pushed her against the exterior of a vehicle, and handcuffed her. While he was handcuffing § 87(2)(b) Lt. Hirsch said, "Shut the fuck up," to other civilians on scene. § 87(2)(b) did not repeat her allegation that Lt. Hirsch struck her with his elbow or allege that he used any other physical force against her. § 87(2)(b) also alleged that Lt. Hirsch shoved § 87(2)(b) to the ground at some point during the incident.

In his telephone statement (**Board Review 02**), § 87(2)(b) reported that, after the officers had finished interacting with § 87(2)(b) Lt. Hirsch used two hands to shove § 87(2)(b) to the ground. § 87(2)(b) stood up, and the officers handcuffed her. § 87(2)(b) did not report that Lt. Hirsch used any other physical force against § 87(2)(b) or any physical force against § 87(2)(b) and he did not report that Lt. Hirsch used any profanity on the scene.

Lt. Hirsch testified (**Board Review 11**) that he ordered § 87(2)(b) to step back from PO Desposito and PO Walsh while they were interacting with § 87(2)(b) prompting her to strike him. Lt. Hirsch did not believe he shoved § 87(2)(b) to the ground, denied calling her a "bitch," and did not recall saying, "Shut the fuck up." Lt. Hirsch further denied shoving § 87(2)(b) to the ground. After deciding to arrest § 87(2)(b) Lt. Hirsch ordered § 87(2)(b) to put her arms behind her back, but she did not comply. Lt. Hirsch moved § 87(2)(b) away from the other civilians and to the side of a parked vehicle and handcuffed her. Lt. Hirsch denied striking § 87(2)(b) against the side of the vehicle. There was no issue placing § 87(2)(b) inside the police vehicle, and Lt. Hirsch denied striking § 87(2)(b) with his elbow.



PO Desposito (**Board Review 10**) and PO Walsh (**Board Review 12**) testified that they did not closely watch Lt. Hirsch's interactions with § 87(2)(b) and the other civilians on scene. They did not recall Lt. Hirsch using any physical force or profanity.

Despite numerous inconsistencies between the civilians' accounts, the investigation established some key facts about this portion of the incident. Although § 87(2)(b) alleged that Lt. Hirsch shoved § 87(2)(b) to the ground, the video footage and § 87(2)(b)'s telephone statement demonstrate that this did not occur. Although § 87(2)(b) alleged that Lt. Hirsch shoved § 87(2)(b) to the ground, the video footage and § 87(2)(b)'s statements indicate that this did not occur. Although § 87(2)(b) alleged that Lt. Hirsch said, "Shut the fuck up," while he was handcuffing her, the video footage demonstrates that Lt. Hirsch said only "shut up" without using profanity. However, as § 87(2)(b) was inconsistent on when Lt. Hirsch allegedly used the word "bitch," and as there is no audio of much of their interaction, the investigation could not conclusively establish whether or not Lt. Hirsch used that word.

Patrol Guide Procedure 203-09 (Board Review 20) states that officers must "interact with members of the public in a professional manner." Language which would ordinarily be inappropriate when dealing with civilians may be excused when a situation becomes so chaotic that their immediate need to maintain order overrides their duty to behave courteously and professionally. DCT Case 2017-17005 (Board Review 22).

As video footage and civilian accounts proves that Lt. Hirsch did not shove § 87(2)(b) to the ground, did not shove § 87(2)(b) to the ground, did not strike § 87(2)(b) against a vehicle, and did not strike § 87(2)(b) with his elbow § 87(2)(g)

The video footage also shows that Lt. Hirsch did not say, "Shut the fuck up," to a group of civilians. He did tell them to shut up. § 87(2)(g)

§ 87(2)(g)

**Allegation (O) Force: Police Officer Michael Desposito used physical force against § 87(2)(b)**

**Allegation (P) Force: Police Officer Michael Desposito used physical force against § 87(2)(b)**

PO Desposito's second BWC clip (**Board Review 08**, 00:50-01:20) captures this portion of the incident. Lt. Hirsch, § 87(2)(b) and PO Walsh walked back to the police vehicle, followed by PO Desposito and PO Trimarchi. § 87(2)(b) walked behind PO Desposito. As he came abreast with the hood of the vehicle, PO Desposito turned and shoved § 87(2)(b) back with two hands. There is no audio of this portion of the incident, and due to the position of the camera, the interaction between PO Desposito and § 87(2)(b) is not clearly visible. PO Desposito entered the vehicle, and § 87(2)(b) stood directly beside the vehicle. PO Desposito ordered § 87(2)(b) to step away from the vehicle, but § 87(2)(b) did not comply. Several seconds later, PO Desposito stepped out of the vehicle, again ordered § 87(2)(b) to step back, and shoved § 87(2)(b) back with two hands. PO Desposito reentered the vehicle, and the officers

immediately drove away.

§ 87(2)(b) reported in his telephone statement (**Board Review 01**) that he followed the officers to their vehicle and stood beside the vehicle. PO Desposito exited and shoved § 87(2)(b) back. § 87(2)(b) did not report that PO Desposito shoved him a second time. § 87(2)(b) did not report that PO Desposito used any physical force against § 87(2)(b). § 87(2)(b) reported that § 87(2)(b) stood beside the officers' vehicle immediately before they drove away, prompting PO Desposito to shove § 87(2)(b) to the ground.

PO Desposito testified (**Board Review 10**) that the officers were preparing to leave the scene and § 87(2)(b) stood within an arm's length of the vehicle. PO Desposito assessed that this was too close for the officers to safely drive away without risking hitting him. PO Desposito placed his hands on § 87(2)(b)'s chest and pressed forward because he wished to direct § 87(2)(b) to step further away from the vehicle. PO Desposito initially testified that he did this one time, but upon reviewing his BWC footage, acknowledged that he pushed § 87(2)(b) back a second time for the same reason.

Patrol Guide Procedure 221-01 (**Board Review 18**) states that officers may use physical force when it is reasonable to ensure the safety of a member of the service or a third person. Any application or use of force must be reasonable under the circumstances.

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

§ 87(2)(b) was standing directly beside the police vehicle when the officers were attempting to drive away from the scene, and § 87(2)(b) did not comply with a verbal command to step away from the vehicle, § 87(2)(g)

**Allegation (Q) Abuse of Authority: Police Officer Michael Desposito failed to provide § 87(2)(b) with a business card.**

**Allegation (R) Abuse of Authority: Police Officer Sean Walsh failed to provide § 87(2)(b) with a business card.**

It is undisputed that PO Desposito did not offer or provide a business card to the man wearing the gray sweatshirt, and that PO Walsh did not offer or provide a business card to § 87(2)(b). It is also undisputed that PO Desposito went to assist PO Walsh immediately after interacting with the man wearing the gray sweatshirt, that § 87(2)(b) was extremely agitated and the officers began interacting with her almost immediately after they finished interacting with § 87(2)(b) and that the officers left the scene immediately after handcuffing § 87(2)(b) due to the escalating situation.

PO Desposito testified (**Board Review 10**) that he did not offer a business card to anyone on scene because he was not required to do so under the Patrol Guide in effect at that time. PO Desposito testified that the Right to Know Act was not in Patrol Guide until October 2020, and that officers were not required to issue cards prior to that time. PO Desposito did not recall whether he had yet been issued business cards on the date of this incident. PO Walsh provided the same explanation for why he did not offer a business card. PO Walsh also noted that the scene was "hectic," and

specifically that the civilians were screaming.

NYC Administrative Code § 14-174 (**Board Review 19**) states that an officer must offer a business card to any individual who is subject to a law enforcement activity that does not lead to an arrest, including a stop, frisk, or search. An officer is, however, not required to comply with this section when exigent circumstances require immediate action by such officer. Patrol Guide Procedure 203-09 (**Board Review 20**) clarifies that exigent circumstances, in this context, include physical resistance, flight, imminent danger of physical injury or damage to property, or other factors which make such procedure impractical.

§ 87(2)(g)

**Allegation (S) Discourtesy: Lieutenant Forrest Hirsch spoke discourteously to** § 87(2)(b) .

Lt. Hirsch's BWC footage (**Board Review 07**, beginning at 02:30) captures a conversation between § 87(2)(b) and Lt. Hirsch in the police vehicle as the officers were driving to the stationhouse. At this point in the incident, § 87(2)(b) stated that she worked at Rikers Island, prompting Lt. Hirsch to reply, "I don't give a fuck where you work."

§ 87(2)(b) did not allege that Lt. Hirsch used any profanity while speaking to her inside the police vehicle.

Lt. Hirsch testified (**Board Review 11**) that he recalled § 87(2)(b) stating that she worked at Rikers Island and that he may have replied to this statement by saying, "I don't give a fuck where you work." After reviewing his BWC footage of the incident, Lt. Hirsch confirmed that he said, "I don't give a fuck where you work," and stated that he had done so because he had been frustrated that § 87(2)(b) was trying to evade responsibility for her actions.

Patrol Guide Procedure 203-09 (**Board Review 20**) states that officers must "interact with members of the public in a professional manner." Language which would ordinarily be inappropriate when dealing with civilians may be excused in the course of a violent confrontation. DCT Case 2017-17276 (**Board Review 21**). Officers may use such language when a situation becomes so chaotic that their immediate need to maintain order overrides their duty to behave courteously and professionally. DCT Case 2017-17005 (**Board Review 22**).

§ 87(2)(b) was handcuffed inside the police vehicle at the time that Lt. Hirsch used the word "fuck" in speaking to her, and she was not attempting to escape or otherwise physically resist custody. This was not a violent confrontation or a chaotic situation in which Lt. Hirsch had an immediate need to maintain order. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

#### Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been party (**Board Review 24**).
- § 87(2)(b)
- This is the first complaint to which § 87(2)(b) has been party (**Board Review 26**).
- § 87(2)(b)
- PO Desposito has been a member of the NYPD for eight years and has been a subject in eight prior CCRB complaints and 21 allegations, none of which was substantiated.

- Lt. Hirsch has been a member of the NYPD for 15 years and has been a subject in 17 additional CCRB complaints and 55 allegations, of which four were substantiated:
  - 201016064 involved substantiated allegations of stop and frisk against Lt. Hirsch. The Board recommended Charges and the NYPD imposed Instructions.
  - 201306080 involved substantiated allegations of entry/search of premises and offensive language against Lt. Hirsch. The Board recommended Charges. Lt. Hirsch was found guilty of the entry/search allegation and not guilty of the offensive language allegation. The NYPD imposed a penalty of five vacation days.
- PO Walsh has been a member of the NYPD for five years and has been a subject in four additional CCRB complaints and nine allegations, none of which was substantiated.

#### **Mediation, Civil, and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of August 23, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**Board Review 28**).
- § 87(2)(b) [REDACTED]

Squad: 5

Investigator: <u>DG</u>	<u>IM Giansante for SI Phillips</u>	<u>September 23, 2021</u>
Signature	Print Title & Name	Date

Squad Leader: <u>Daniel Giansante</u>	<u>IM Daniel Giansante</u>	<u>September 23, 2021</u>
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date